WISCONSIN AIR TOXICS RULES

DUE DILIGENCE AND SAFE HARBOR

The State of Wisconsin regulates air toxics to protect people from air emissions known or suspected to cause cancer, or that cause other health effects such as asthma or other respiratory damage, kidney failure, heart failure, infertility, and birth defects.

Wisconsin air toxics rules apply to facilities with air emissions in Wisconsin. Facilities must identify air toxics, quantify emissions, and reduce or control emissions where necessary, complying with Wisconsin's air toxics regulations.

The recent revisions to NR 445 introduced Due Diligence and Safe Harbor provisions to Wisconsin's air toxics rules. These provisions reduce the regulatory risk for facilities that make a good faith effort to discover their air toxics and to comply with the applicable air toxics rules.

WHAT IS DUE DILIGENCE?

[NR445.02(5)]

The rule defines due diligence as a reasonable investigation of likely sources of air emissions. These include investigating:

1. Substances listed on a Material Safety Data Sheet,
2. Substances that are reasonably expected to be created through a combustion process or a manufacturing process, and
3. Substances contained in or created through the treatment or disposal of raw materials or waste.

WHAT IS SAFE HARBOR?

[NR445.06]

Safe Harbor provides that a facility that exercises due diligence, and meets applicable compliance requirements for the identified emissions, will not be penalized if it is later discovered that it emits a regulated air toxic over threshold levels. While the facility will be required to promptly inform DNR of its discovery and to come into compliance in a timely manner, it will not face retroactive penalties.

Sources of information you can use to determine toxic air emissions:

- Substance listed on an MSDS.
- Substance on purchasing records.
- Common knowledge that substance is created in process.
- Trade Association informed members about the toxic.
- Supplier(s) provided information.
- Articles about air toxic in industry trade journals.

Your facility may have air toxics if you:

- Use a lot of solvents.
- Have a drying oven.
- Have strong odors at the facility.
- Need to wear respiratory protection.
- Use exhaust fans to vent fumes, heat, or dust.
- Have in place OSHA and/or NIOSH safety regulations to protect against inhalation effects.

How to Demonstrate Due Diligence

Does your facility emit *anything* to the air? If no, then you are done. If yes, then you must investigate further. Some steps you might take to identify and estimate air toxics include:

- Gathering and examining MSDS sheets
- Checking purchasing records
- Checking toxics' common names
- Calling suppliers about toxics in inputs
- Talking with trade association
- Testing suspect waste streams
- Checking DNR's website, http://dnr.wi.gov/org/aw/air/health/airtoxics/, for more information.
- Using the HAPS help tool, http://www.uwex.edu/shwec/LIEBL/HAPs%20Help%20ver1.1.pdf, developed by UW-Extension's Solid & Hazardous Waste Education Center.

You should keep a record of any steps you take to search for air toxics. Document and maintain a file for all the work done to determine your facility's status and compliance (even if you found no toxic substances.) Maintain copies of all records for DNR for at least five years.

How Toxic Air Emissions Are Created

Some *activities* likely to create toxic air emissions include:

- Mixing chemicals
- Creating reactions between chemicals
- Applying heat

Some *processes* likely to create toxic air emissions include:

- Fiberglass
- Urethane foam
- Plastics manufacturing
- Curable coatings
- Welding
- Metal fabrication
- Activities that create dust
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Note: Lists are not intended to be exhaustive.

Did You Know...

Substances can be known by many different names.
To find out if a substance used at a facility is regulated, you may have to find the other names (synonyms) by which the toxic is known.

- A substance's or mixture's CAS number is a unique identifying code.
- There are some instances (e.g., xylene and many metals) where one CAS number is used as a representative of a group of chemicals. In these cases, multiple CAS numbers apply.
- If two substances have similar names but different CAS numbers, they are different substances.
- In NR 445 tables, there are instances where a single CAS number is listed more than once. This is because toxicity can vary depending on the physical form of the substance emitted (i.e., as a fume or as a mist.) The regulatory name reflects the form of the emission.

You can check for substance names using online resources such as www.uwex.ed/shwec/ or www.chemfinder.com.

For Further Assistance Contact:

●**Wisconsin Department of Natural Resources, Bureau of Air Management; Environmental Analysis & Outreach Section**
Phone: 608/264-9218
Web site: www.dnr.state.wi.us/org/aw/air

● **Wisconsin Department of Commerce, Small Business Clean Air Assistance Program**
Renee: 608/264-6153
Tom: 608/267-9214
Web site: www.wienvirohelp.com

●**University of Wisconsin Extension-Solid & Hazardous Waste Education Center (SHWEC)**
Phone: 608/262-0385
Web site: http://www.uwex.edu/shwec/

Look for additional fact sheets on:
- Overview of Revisions to NR 445
- Incidental Emitters
- Compliance Options

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